

SENATE AMENDMENTS

2nd Printing

By: Hernandez, Paddie, Hunter, Morales Shaw,
et al.

H.B. No. 16

A BILL TO BE ENTITLED

AN ACT

relating to the sale of wholesale indexed products by retail
electric providers.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Subchapter C, Chapter 39, Utilities Code, is
amended by adding Section 39.110 to read as follows:

Sec. 39.110. WHOLESALE INDEXED PRODUCTS PROHIBITED. (a)
In this section, "wholesale indexed product" means a retail
electric product in which the price a customer pays for electricity
includes a direct pass-through of real-time settlement point prices
determined by the independent organization certified under Section
39.151 for the ERCOT power region.

(b) A retail electric provider may not offer a wholesale
indexed product to a residential customer.

SECTION 2. Not later than December 1, 2021, the Public
Utility Commission of Texas shall adopt any rules necessary to
enforce Section 39.110, Utilities Code, as added by this Act.

SECTION 3. This Act takes effect immediately if it receives
a vote of two-thirds of all the members elected to each house, as
provided by Section 39, Article III, Texas Constitution. If this
Act does not receive the vote necessary for immediate effect, this
Act takes effect September 1, 2021.

ADOPTED

APR 29 2021

Letsy Law
Secretary of the Senate

By: *Kelly Harmon*

H.B. No. 16

Substitute the following for ____B. No. ____:

By: *Kelly Harmon*

C.S. H.B. No. 16

A BILL TO BE ENTITLED

AN ACT

relating to the regulation of certain retail electric products.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Subchapter C, Chapter 39, Utilities Code, is amended by adding Section 39.110 to read as follows:

Sec. 39.110. WHOLESALE INDEXED PRODUCTS PROHIBITED. (a)

In this section, "wholesale indexed product" means a retail electric product in which the price a customer pays for electricity includes a direct pass-through of real-time settlement point prices determined by the independent organization certified under Section 39.151 for the ERCOT power region.

(b) An aggregator, a broker, or a retail electric provider may not offer a wholesale indexed product to a residential or small commercial customer.

(c) An aggregator, a broker, or a retail electric provider may enroll a customer other than a residential and small commercial customer in a wholesale indexed product only if the provider, aggregator, or broker obtains before the customer's enrollment an acknowledgment signed by the customer that the customer accepts the potential price risks associated with a wholesale indexed product.

(d) An acknowledgment required by Subsection (c) must include the following statement, in clear, boldfaced text:

"I understand that the volatility and fluctuation of wholesale energy pricing may cause my energy bill to be

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multiple times higher in a month in which wholesale energy prices are high. I understand that I will be responsible for charges caused by fluctuations in wholesale energy prices."

(e) An acknowledgment required by Subsection (c) may be included as an addendum to a contract.

(f) A retail electric provider that provides a wholesale indexed product to a customer must keep on file the acknowledgment required by Subsection (c) for each customer while the customer is enrolled with the retail electric provider in the wholesale indexed product.

SECTION 2. Section 39.112, Utilities Code, is amended to read as follows:

Sec. 39.112. NOTICE OF EXPIRATION AND PRICE CHANGE. (a) In this section, "fixed rate product" means a retail electric product with a term of at least three months for which the price for each billing period, including recurring charges, does not change throughout the term of the contract, except that the price may vary to reflect actual changes in transmission and distribution utility charges, changes to ERCOT or Texas Regional Entity administrative fees charged to loads, or changes to federal, state, or local laws that result in new or modified fees or costs that are not within the retail electric provider's control.

(b) A retail electric provider shall provide a residential customer who has a fixed rate product with at least three ~~one~~ written notices ~~notice~~ of the date the fixed rate product will expire. The notices ~~notice~~ must be provided during the last third

1 of the contract period and in intervals that allow for, as
2 practicable, even distribution of the notices throughout the last
3 third of the contract period. The final notice for a contract with
4 a period of more than four months must be provided at least 30 days
5 before the date that the contract will expire. The final notice for
6 a contract with a period of less than four months must be provided
7 at least 15 days before the date that the contract will expire.

8 (c) The retail electric provider must provide each notice
9 required by Subsection (b) to the customer by mail at the customer's
10 billing address, unless the customer has opted to receive
11 communications electronically from the retail electric provider.

12 (d) If the retail electric provider has access to customer
13 contact information that allows the provider to send the customer a
14 text message or call the customer, and the customer has agreed to
15 receive notices by text message or call, the retail electric
16 provider may provide additional notice to the customer by text
17 message or call of the date the fixed rate product will expire.
18 Notice provided by text message or call does not constitute notice
19 under Subsection (b).

20 (e) A notice required by Subsection (b) must:

21 (1) for a notice provided by mail, [be sent to the
22 customer's billing address by mail at least 30, but not more than
23 60, days preceding the date the contract will expire,

24 [-(2) be sent to the customer's e-mail address, if
25 available to the provider and if the customer has agreed to receive
26 notices electronically, at least 30, but not more than 60, days
27 preceding the date the contract will expire,

1 ~~[(3)]~~ include in a manner visible from ~~[on]~~ the
2 outside of the envelope in which the notice is sent, a statement
3 that reads: "Contract Expiration Notice. See Enclosed.";

4 (2) ~~[(4)]~~ if included with a customer's bill, be
5 printed on a separate page or included as a separate document; ~~[and]~~

6 (3) ~~[(5)]~~ include a description of any fees or charges
7 associated with the early termination of the customer's fixed rate
8 product; and

9 (4) describe any renewal offers the retail electric
10 provider chooses to make available to the customer and identify
11 methods by which the customer may obtain the contract documents for
12 each of the offered products.

13 (f) The final notice provided under Subsection (b) must
14 include the pricing terms for the default renewal product required
15 by Subsection (h).

16 (g) ~~[(e)]~~ A retail electric provider shall include on each
17 billing statement, in boldfaced and underlined text, the end date
18 of the fixed rate product.

19 (h) Except as provided by Subsection (j), if a customer does
20 not select another retail electric product before the expiration of
21 the customer's contract term with a retail electric provider, the
22 provider shall automatically serve the customer through a default
23 renewal product that the customer may cancel at any time without a
24 fee. The default renewal product must be:

25 (1) a month-to-month product in which the price the
26 customer pays for electricity may vary between billing cycles; and

27 (2) based on clear terms designed to be easily

1 understood by the average customer.

2 (i) A retail electric provider shall include in each
3 contract for service the terms of the default renewal product that
4 the customer will automatically be enrolled in under Subsection (h)
5 if the customer does not select another retail electric product
6 before the expiration of the contract term.

7 (j) If a retail electric provider does not provide notice of
8 the expiration of a customer's contract with the provider in
9 accordance with this section and the customer does not select
10 another retail electric product before the expiration of the
11 customer's contract term with the provider, the retail electric
12 provider must continue to serve the customer under the pricing
13 terms of the fixed rate product contract until:

14 (1) the provider provides notice of the expiration of
15 the contract in accordance with this section; or

16 (2) the customer selects another retail electric
17 product.

18 (k) [~~(d)~~] No provision in this section shall be construed to
19 prohibit the commission from adopting rules that would provide a
20 greater degree of customer protection.

21 SECTION 3. The changes in law made by this Act apply only to
22 an enrollment or re-enrollment of a customer in a retail electric
23 product that is executed on or after the effective date of this Act.
24 An enrollment or re-enrollment of a customer in a retail electric
25 product that is executed before the effective date of this Act is
26 governed by the law as it existed immediately before the effective
27 date of this Act, and that law is continued in effect for that

1 purpose.

2 SECTION 4. This Act takes effect September 1, 2021.

LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 87TH LEGISLATIVE REGULAR SESSION

April 29, 2021

TO: Honorable Dade Phelan, Speaker of the House, House of Representatives

FROM: Jerry McGinty, Director, Legislative Budget Board

IN RE: HB16 by Hernandez (Relating to the regulation of certain retail electric products.), **As Passed 2nd House**

No significant fiscal implication to the State is anticipated.

It is assumed that the costs associated with the bill's provisions relating to the regulation of certain retail electric products could be absorbed using existing resources.

Local Government Impact

No fiscal implication to units of local government is anticipated.

Source Agencies: 473 Public Utility Commission of Texas

LBB Staff: JMc, LBO, SZ, MB, RRE

LEGISLATIVE BUDGET BOARD

Austin, Texas

FISCAL NOTE, 87TH LEGISLATIVE REGULAR SESSION

April 22, 2021

TO: Honorable Kelly Hancock, Chair, Senate Committee on Business & Commerce

FROM: Jerry McGinty, Director, Legislative Budget Board

IN RE: HB16 by Hernandez (relating to the regulation of certain retail electric products.), **Committee Report 2nd House, Substituted**

No significant fiscal implication to the State is anticipated.

It is assumed that the costs associated with the bill's provisions relating to the regulation of certain retail electric products could be absorbed using existing resources.

Local Government Impact

No fiscal implication to units of local government is anticipated.

Source Agencies: 473 Public Utility Commission of Texas

LBB Staff: JMc, SZ, MB, RRE

LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 87TH LEGISLATIVE REGULAR SESSION

April 21, 2021

TO: Honorable Kelly Hancock, Chair, House Committee on Business & Commerce

FROM: Jerry McGinty, Director, Legislative Budget Board

IN RE: HB16 by Hernandez (Relating to the sale of wholesale indexed products by retail electric providers.),
As Engrossed

No significant fiscal implication to the State is anticipated.

It is assumed that the costs associated with the bill's provisions relating to the sale of wholesale indexed products by retail electric providers could be absorbed using existing resources.

Local Government Impact

No significant fiscal implication to units of local government is anticipated.

Source Agencies: 473 Public Utility Commission of Texas

LBB Staff: JMc, SZ, MB, RRE

LEGISLATIVE BUDGET BOARD

Austin, Texas

FISCAL NOTE, 87TH LEGISLATIVE REGULAR SESSION

March 19, 2021

TO: Honorable Chris Paddie, Chair, House Committee on State Affairs

FROM: Jerry McGinty, Director, Legislative Budget Board

IN RE: HB16 by Hernandez (relating to the sale of wholesale indexed products by retail electric providers.),
Committee Report 1st House, Substituted

No significant fiscal implication to the State is anticipated.

The Public Utility Commission anticipates that the costs associated with the bill's provisions relating to a prohibition on the sale of wholesale indexed products by retail electric providers could be absorbed using existing resources.

Local Government Impact

No fiscal implication to units of local government is anticipated.

Source Agencies: 304 Comptroller of Public Accounts, 473 Public Utility Commission of Texas, 475 Office of Public Utility Counsel

LBB Staff: JMc, SMAT, MB, RRE

LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 87TH LEGISLATIVE REGULAR SESSION

March 18, 2021

TO: Honorable Chris Paddie, Chair, House Committee on State Affairs

FROM: Jerry McGinty, Director, Legislative Budget Board

IN RE: HB16 by Hernandez (Relating to a prohibition on the sale of wholesale indexed products by retail electric providers.), **As Introduced**

<p>No significant fiscal implication to the State is anticipated.</p>
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The Public Utility Commission anticipates that the costs associated with the bill's provisions relating to a prohibition on the sale of wholesale indexed products by retail electric providers could be absorbed using existing resources.

Local Government Impact

No fiscal implication to units of local government is anticipated.

Source Agencies: 304 Comptroller of Public Accounts, 473 Public Utility Commission of Texas, 475 Office of Public Utility Counsel

LBB Staff: JMc, SMat, MB, RRe